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KERALA GAZETTE

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CONTENTS

Report of the Select Committee on the Kerala Plantations (Additional Tax) Bill, 1960 and the Bill as reported by the Select Committee.

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THE KERALA PLANTATIONS (ADDITIONAL TAX) BILL, 1960.

(*Report of the Select Committee.*)

The Select Committee to which the Kerala Plantations (Additional Tax) Bill, 1960 was referred, have considered the Bill clause by clause and now submit this, their report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was published in the Gazette Extraordinary dated the 23rd July 1960.

3. The Bill was introduced in the Legislative Assembly on the 26th July 1960 and the motion for reference of the Bill to a Select Committee was adopted on the 27th July 1960.

4. The Committee met on the 28th and 29th July, 1960. The changes proposed by the Committee and the reasons therefor are set out in the following paragraphs:—

5. *Clause 2, sub-clause (5)* :—The Committee consider that, in the definition of "person", a co-operative society may be specifically included to remove any possible doubt, although it may come under "association of individuals" or "institution capable of holding property". The sub-clause has been modified accordingly.

6. *Clause 9*: (i) *Sub-clause (1)*:—The Committee are of opinion that there need be no right of appeal from orders regarding provisional assessment under clause 6. The proviso to this sub-clause has been modified to take away the right of appeal in such cases.

(ii) *Sub-clause (3)* :—This sub-clause has been slightly modified by the Committee to make it clear that the period of limitation in the case of assessment shall start from the service of the notice of demand relating to the assessment.

(iii) *Sub-clause (5)*:—The Committee consider that at the hearing of the appeal against the orders of the assessing authority, the assessing authority should also have a right to be heard. The provisos to this sub-clause have been modified for this purpose.

7. *Clause 13.*—Under this clause, the plantation tax is to be paid in such number of instalments, and on such dates as are to be specified in the notice. The Committee think that these matters should be prescribed by rules. The clause has been suitably modified for this purpose.

8. *Clause 14.*—The Committee consider that there should be no provision for the recovery of penalty for committing default in the payment of plantation tax. However, they think that

interest at the rate of nine per cent per annum on arrears of plantation tax may be recovered. The clause has been modified providing for the recovery of interest instead of penalty.

9. *Clause 17*.—The Committee are of the view that it should be made clear that the limitation for claiming refunds laid down under this clause should apply only to claims under clause 15 and not to any claim arising on account of a rectification of mistake. They also consider that it is enough if the period of limitation is fixed as one year. The clause has been suitably modified for these purposes.

10. *Clause* 21.—The Committee think that the assessing authority should also have the power to authorise officers to conduct inspection under this clause. Necessary modification in this clause has been effected by the Committee.

11. *Clause* 27, *Sub-clause* (2).—A power to make rules for laying down the mode and manner of recovery of the Plantation tax has been specifically included in this sub-clause as sub-clause (2) (f).

12. *Schedule II*.—The Committee are of the view that, for determining the extent of plantations, the average number of cocoanut trees per acre may be fixed as 85 and the average number of pepper vines per acre may be fixed as 400. Accordingly, the figures 70 in clause (i) and 330 in clause (v) have been substituted by 85 and 400 respectively.

13. The other changes made by the Committee are either verbal or consequential.

K. CHANDRASEKHARAN,
Chairman, Select Committee.

DISSENTING NOTE.

We, the members of the Select Committee on the Kerala Plantations (Additional Tax) Bill, 1960 feel that the rates of tax specified in Schedule I for cocoanut and pepper plantations will fall heavily on small holders. The rates, therefore, need revision in the case of small plantations of pepper and cocoanut.

The price of pepper is subject to violent fluctuations. It is also seen that the price has a tendency to fall. In the pepper market the prices are very often speculative. Even if there is any rise in prices, the benefit does not go to the small producer. This crop has also to meet keen competition from Indonesia.

Our State does not produce as much cocoanut as is necessary to meet the requirements of India. India still imports copra from Ceylon. Cocoanut plantation has therefore to be encouraged. Moreover, cocoanut plantation is a means of livelihood for a large number of people. There are many cottage industries which depend for the supply of their raw materials on cocoanut plantation. Any imposition of additional tax on small holders of cocoanut plantation will discourage fresh cultivation.

We, therefore, suggest that in order to give relief to small holders of these two plantations, the limit of exemption from taxation shall be 7½ acres instead of 5½ acres. So also the rate of tax per acre for the aggregate extent of cocoanut and pepper plantations above 7½ acres up to 15 acres shall be reduced to Rs. 6. In order to compensate the fall in revenue consequent on the changes suggested above, we propose that the rate of taxation shall be raised on a higher slab.

(Sd.) P. RAVINDRAN.
(Sd.) M. M. SUNDARAM.

30-7-1960.

THE KERALA PLANTATIONS (ADDITIONAL TAX) BILL, 1960

(*As amended by the Select Committee*)

(Words underlined indicate the amendments suggested by the Committee, omissions are indicated by asterisks)

A

BILL

to provide for the levy of an additional tax on plantations in the State of Kerala.

Preamble.—WHEREAS it is expedient to provide for the levy of an additional tax on plantations in the State of Kerala;

BE it enacted in the Eleventh Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Plantations (Additional Tax) Act, 1960.

(2) It extends to the whole of the State of Kerala.

(3) It shall be deemed to have come into force on the first day of April, 1960.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(1) "assessee" means a person by whom plantation tax or any other sum of money is payable under this Act, and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of plantation tax payable by him;

(2) "appellate authority" means the appellate authority appointed by the Government;

(3) "assessing authority" means the assessing authority appointed by the Government;

(4) "company" means a company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956), and includes a foreign company within the meaning of section 591 of that Act;

(5) "person" means any individual or association of individuals, holding any plantation for himself or for any other, or partly for himself and partly for another, whether as owner, tenant, mortgagee in possession, trustee, receiver, common manager, administrator or executor or in any capacity recognised by law, and includes a Hindu undivided family, an Aliyasanthana family or branch, a Marumakkathayam tarwad or tavazhi, a Nambudiri family or other family to which the

provisions of the Kerala Nambudiri Act, 1958, apply, a firm, a company or a co-operative society registered or deemed to be registered under the Travancore-Cochin Co-operative Societies Act, 1951 or the Madras Co-operative Societies Act, 1932, and any institution capable of holding property;

(6) "plantation" means land used for growing one or more of the following:—

(i) cocoanut trees;
(ii) arecanut trees;
(iii) rubber plants;
(iv) coffee plants;
(v) tea plants;
(vi) cardamom plants;
(vii) pepper vines;

(7) "prescribed" means prescribed by rules made under this Act;

(8) "to hold" with reference to a plantation means to be in possession of the plantation as owner or as tenant or as mortgagee in possession;

(9) "valuation date" in relation to the financial year commencing on the first day of April, 1960, means the first day of September, 1960, and in relation to any other financial year for which an assessment is to be made under this Act, means the first day of April of that year.

3. *Charge of plantation tax.*—(1) Subject to the other provisions contained in this Act, for every financial year commencing on and from the first day of April, 1960, there shall be charged in respect of the lands comprised in plantations held by a person on the corresponding valuation date an additional tax (hereinafter referred to as 'plantation tax') at the rates specified in Schedule I; and the person holding such plantations shall be liable to pay the plantation tax.

(2) The plantation tax assessed under this Act shall be payable by the assessee for every financial year until the extent of plantations held by him is revised and the plantation tax is assessed on the basis of the revised extent, under sub-section (3), and from the financial year immediately following the revision the plantation tax assessed on the basis of such revision shall be payable.

(3) The extent of plantations held by a person determined under section 5 shall ordinarily be revised at the end of five years, but the assessing authority may, either *suo motu* or on application by an assessee, revise the extent so determined, before the expiry of five years, and where such extent has been revised as aforesaid, the plantation tax payable thereon shall be assessed on the basis of the revised extent.

(4) For purposes of the assessment of plantation tax payable by a person under this Act, the extent of plantations held by him shall be determined in the manner specified in Schedule II.

(5) The tax charged under this section shall be in addition to the basic tax payable in respect of those lands under the Land Tax Act, 1955.

4. *Return relating to plantations.*—(1) Every person who on the first day of September, 1960, holds five acres or more in extent of plantations in the aggregate shall furnish to the assessing authority so as to reach him before the thirty-first day of December, 1960, a return in the prescribed form and verified in the prescribed manner and containing such particulars as may be prescribed.

(2) Every person who, on the first day of April, 1961, or of any subsequent year, holds five acres or more in extent of plantations in the aggregate, the extent of plantations held by whom has not been determined under this Act, shall, before the first day of June of that year, furnish to the assessing authority a return as specified in sub-section (1).

(3) In the case of any person who, in the opinion of the assessing authority, holds such extent of plantations as to render such person liable to plantation tax for any financial year, the assessing authority may serve a notice in the prescribed form requiring such person to furnish within such period, not being less than thirty days as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner and containing such particulars as may be provided for in the notice.

(4) If any person has not furnished a return within the time allowed by or under sub-section (1), sub-section (2) or sub-section (3) or, having furnished a return under any of those sub-sections discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

(5) The assessing authority may serve on any person who has made a return under sub-section (1) or sub-section (2) or upon whom a notice has been served under sub-section (3), a notice requiring him, on a date to be therein specified, to produce or cause to be produced, such documents as such authority may require.

5. *Determination of extent of plantation and the assessment of plantation tax.*—(1) If the assessing authority is satisfied that a return made under section 4 is correct and complete, he shall, by order in writing, determine the extent of plantations held by the assessee and assess the amount of plantation tax payable by him on the basis of such return.

(2) If the assessing authority is not satisfied that the return is correct and complete, he shall serve on the person who made the return a notice requiring him, on the date specified therein, either to attend the office of the assessing authority or to produce, or to cause to be produced, any evidence on which such person may rely in support of the return.

(3) On the day specified in the notice under sub-section (2) or as soon afterwards as may be, the assessing authority, after considering such evidence as such person may produce and such other evidence as that authority may require on specified points, shall determine the extent of plantations held by the assessee and assess the amount of plantation tax payable by him on the basis of the extent of plantations so determined.

(4) If any person fails to make a return under sub-section (3) of section 4, or fails to comply with all the terms of a notice issued under sub-section (5) of that section or under sub-section (2) of this section, the assessing authority shall determine the extent of plantation to the best of his judgment and assess the plantation tax payable by the assessee on the basis of the extent of plantation so determined.

6. *Provisional assessment.*—(1) The assessing authority may at any time after the receipt of a return under sub-section (1) or sub-section (2) or sub-section (3) of section 4, proceed to make in a summary manner a provisional assessment of the plantation tax payable by the assessee on the basis of the return and the documents, if any, accompanying it.

(2) For the avoidance of doubt, it is hereby declared that the provisions of sections 13 and 14 apply in relation to any plantation tax payable in pursuance of a provisional assessment made under sub-section (1) as if it were a regular assessment made under section 5.

(3) After a regular assessment has been made under section 5, any amount paid towards a provisional assessment made under sub-section (1) shall be deemed to have been paid towards the regular assessment; and where the amount paid towards the provisional assessment exceeds the amount payable under the regular assessment, the excess shall be refunded to the assessee.

7. *Cancellation of assessment in certain cases.*—Where an assessee, within one month from the service of a notice of demand issued as hereinafter provided, satisfies the assessing authority that he was prevented by sufficient cause from making the return required by section 4 or that he did not receive the notice issued under sub-section (3) or sub-section (5) of that section or sub-section (2) of section 5 or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of any such notice, the assessing authority shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 5.

8. *Notice of demand.*—When any plantation tax is due in consequence of any order passed under or in pursuance of this Act, the assessing authority shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.

9. *Appeal against assessment, etc.*—(1) Any assessee objecting to the extent of plantation or the amount of plantation tax assessed under section 5 or denying his liability to be assessed under this Act or objecting to any order of the assessing authority under this Act may appeal to the appellate authority against the assessment or against such order:

Provided that no appeal shall lie in respect of an assessment made under sub-section (4) of section 5 or under section 6.

(2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) The appeal shall be presented within a period of thirty days from the date of service of the notice of demand relating to the assessment or the date of service of the order; but the appellate authority may admit an appeal presented after the expiration of the said period, if he is satisfied that the appellant had sufficient cause for not presenting it within the said period.

(4) The appellate authority shall fix a day and place for the hearing of the appeal and may from time to time adjourn the hearing and make or cause to be made such further inquiry as he thinks fit.

(5) In disposing of an appeal, the appellate authority may—

(a) in the case of an order of assessment—

(i) confirm, reduce, enhance, or annul the assessment,

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed; or

(b) in the case of any other order, confirm, cancel or vary such order:

Provided that an appeal shall not be disposed of unless the appellant has been given a reasonable opportunity of being heard:

Provided further that at the hearing of an appeal the assessing authority also shall have the right to be heard.

(6) The appellate authority shall, on the conclusion of the appeal, communicate the orders passed by him to the assessee and the assessing authority.

(7) The orders passed by the appellate authority shall, subject to the provisions of section 10, be final and shall not be liable to be questioned in a court of law.

10. *Powers of revision of Board of Revenue.*—The Board of Revenue may, at any time, call for and examine the record of any proceeding pending before, or disposed of by, the appellate authority, and may pass such order in reference thereto as the Board of Revenue thinks fit:

Provided that no such order shall be passed under this section without notice to the party who may be affected by the order.

11. *Rectification of mistake.*—(1) The appellate authority may at any time within three years from the date of an order passed by him on appeal and the assessing authority may at any time within three years from the date of any assessment or refund order passed by him, of his own motion, rectify any mistake apparent from the record of the appeal, assessment or refund, as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by an assessee:

Provided that no such rectification shall be made having the effect of enhancing an assessment or reducing a refund unless the assessee has been given a reasonable opportunity of being heard in the matter.

(2) Where any such rectification has the effect of reducing the assessment, the assessing authority shall make any refund which may be due to such assessee.

(3) Where any such rectification has the effect of enhancing the assessment or reducing a refund, the assessing authority shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such notice of demand shall be deemed to be issued under section 8 and the provisions of this Act shall apply accordingly.

12. *Power to take evidence on oath, etc.*—The appellate authority and the assessing authority shall, for the purposes of this Act, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:—

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) compelling the production of documents; and

(c) issuing commissions.

13. *Recovery of plantation tax.*—Any amount specified as payable in a notice of demand under section 8, or an order under section 9, or an order under section 10, shall be paid in such number of instalments, within such time, at such place and to such person, as may be prescribed, and any assessee failing so to pay shall be deemed to be in default.

14. *Mode and time of recovery.*—(1) When the plantation tax is not paid on the due date the arrears of the tax shall bear interest at the rate of nine per cent per annum from the date of default.

* * * * * *

(2) The arrears of plantation tax and the interest, if any, thereon shall be a first charge on the interest of the holder in the plantation subject to the charge for basic tax and shall be recoverable under the law for the time being in force relating to the recovery of arrears of land revenue; and any sale of such interest for arrears of plantation tax and interest shall be free from all encumbrances.

15. *Refunds.*—(1) If any person satisfies the assessing authority that the amount of plantation tax paid by him for any year exceeds the amount with which such person is properly assessable under this Act for that year, he shall be entitled to a refund of any such excess.

(2) The appellate authority in the exercise of his appellate powers, if satisfied to the like effect, shall cause a refund to be made by the assessing authority of any amount found to have been wrongly paid or paid in excess.

16. *Power to set off amount of refund against tax remaining payable.*—Where, under any of the provisions of this Act, a refund is found to be due to any person, the assessing authority or the appellate authority, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded, or any part of that amount, against the plantation tax, if any, remaining payable by the person to whom the refund is due.

17. *Limitation of claims for refund.*—No claim to any refund of plantation tax under section 15 shall be admitted, unless it is made within one year from the date of the order of assessment or, where an appeal or application for revision has been preferred from the order of assessment, within one year from the order in appeal or revision.

18. *False statements in declaration.*—If any person makes a statement in a verification mentioned in section 4 or sub-section (2) of section 9 which is false and which he either knows or believes to be false or does not believe to be true, he shall be deemed to have committed the offence described in section 177 of the Indian Penal Code.

19. *Failure to furnish return or document.*—If any person fails without reasonable cause or excuse—

(a) to furnish in due time any return specified in sub-section (1) or sub-section (2) or sub-section (3) of section 4; or

(b) to produce or cause to be produced on or before the date mentioned in any notice under sub-section (5) of section 4, such documents as are referred to in the notice,

he shall be punishable with fine which may extend to five rupees for every day during which the default continues.

20. *Power to call for information.*—(1) The assessing authority may serve or cause to be served on any person, who, according to the assessing authority, is in possession of special knowledge in regard to the extent or other particulars regarding plantations held by an assessee, a notice requiring him to furnish information regarding any such particulars as may be necessary for the purpose of assessment of tax under this Act, and thereupon such person shall be bound to furnish such particulars as are available with him.

(2) If any person fails without reasonable cause or excuse to furnish in due time any information called for under sub-section (1), he shall be punishable with fine which may extend to fifty rupees.

21. *Power of inspection.*—(1) The assessing authority or any other officer authorised by the Government or by the assessing authority in this behalf may, at any reasonable time, enter any plantation for the purpose of collecting particulars relating thereto and may require the holder of the plantation or any other person in charge of the plantation to produce for inspection any book, register, or record kept therein and ask for any information relating to the plantation; and the holder of the plantation or other person in charge shall be bound to afford facilities for such inspection, and furnish such information as is available with him.

(2) Any person who obstructs the assessing authority or other officer authorised in the exercise of the powers conferred on him under sub-section (1) or fails to produce any book, register or record when required to be produced or furnish the available information, shall be punishable with imprisonment of either description for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

22. *Prosecutions.*—(1) A person shall not be proceeded against for an offence under section 18, section 19, section 20 or section 21 except at the instance of such officer as may be authorised by the Government in this behalf.

(2) Before instituting proceedings against any person under sub-section (1) the officer so authorised shall call upon such person to show cause why proceedings should not be instituted against him.

(3) The officer so authorised may either before or after the institution of proceedings compound any such offence other than an offence under section 21.

23. *Cognizance of offences.*—No Magistrate other than a Magistrate of the first class shall try any offence under this Act.

24. *Place of assessment.*—The plantations held by a person shall be assessed by the assessing authority of the area in which the plantations are situated or, where the plantations are situated within the jurisdiction of two or more assessing authorities, by such assessing authority and in such manner as may be prescribed.

25. *Manner of service of notice.*—(1) A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908.

(2) Any such notice or requisition may, in the case of a firm, Hindu undivided family or aliyasantbana family or branch or Marumakkathayam tarwad or tavazhi or a Nambudiri family or other family to which the provisions of the Kerala Nambudiri Act, 1958 apply, be addressed to any member of the firm or to the Manager or Karnavan, or any adult member of the family, tarwad, tavazhi or branch and, in the case of any other association of persons be addressed to the principal officer thereof.

26. *Power to grant extension of time for returns, etc.*—The assessing authority may, in his discretion, in the case of any person or class of persons, extend the date before which the return under sub-section (1) or sub-section (2) of section 4 has to be furnished or, on application by an assessee, allow him such extension or extensions of time as the authority thinks fit to furnish the return or comply with the terms of a notice under this Act.

27. *Power to make rules.*—(1) The Government may make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the procedure to be followed in determining whether any land is a plantation;

(b) the procedure for determining the extent of plantations held by a person;

(c) the procedure for revising the extent of plantations held by a person and provision for appeals from orders in such revision;

(d) the form of returns under section 4 and the manner in which they should be verified;

(e) the form of the notice of demand mentioned in section 8;

(f) the mode and manner of recovery of plantation tax;

(g) the powers and duties of assessing authorities, appellate authorities and other officers under this Act, the relation of such authorities to each other and the conditions of service of such authorities;

(h) the form in which appeals under this Act shall be presented and the manner in which they shall be verified;

(i) the form of the notice of demand mentioned in sub-section (3) of section 11;

(j) the manner in which and the authority to whom applications for refund shall be made and the procedure to be followed in respect of such applications; and

(k) all other matters expressly required or allowed by this Act to be prescribed.

(3) All rules made under this Act shall be laid for not less than fourteen days before the Legislative Assembly, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

28. *Remission of plantation tax.*—Notwithstanding anything contained in this Act, the Government may remit, in whole or in part, the amount of plantation tax payable by any person if they are satisfied that it is necessary to do so on account of the failure or destruction of crops or on account of the fact that the yield in any plantation has been substantially reduced due to natural causes.

29. *Bar of suits in Civil Courts.*—No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act and no prosecution, suit or other proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act.

30. *Computation of period of limitation.*—In computing the period of limitation prescribed for any appeal under this Act the date on which the order complained of was made and the time requisite for obtaining a copy of such order shall be excluded.

31. *Delegation of powers.*—The Government may, by notification in the Gazette, delegate any of their powers under this Act, except the power under section 27, to the Board of Revenue or other authority.

32. *Removal of difficulties.*—If any difficulty arises in giving effect to the provisions of this Act, the Government, as occasion may require, may by order do anything not inconsistent with the provisions of this Act for the purpose of removing the difficulty.

SCHEDULE I

[*See* section 3(1)]

Rates of plantation tax.

		Rate.
1.	Where the aggregate extent of plantations held by a person is below five acres ..	Nil.
2.	Where the aggregate extent of plantations held by a person is five acres or more—	
	(a) on the first two acres ..	Nil.
	(b) on the remaining extent ..	Eight rupees per acre.

SCHEDULE II

[*See* section 3 (4)b

For the purposes of the assessment of plantation tax payable by a person, the extent of plantations held by him shall be deemed to be the aggregate of the following, expressed in acres, namely:—

(i) the quotient obtained by dividing the total number of bearing cocoanut trees standing on all lands held by him by 85;

(ii) the quotient obtained by dividing the total number of bearing arecanut trees standing on all lands held by him by 600;

(iii) the quotient obtained by dividing the total number of yielding rubber plants standing on all lands held by him by 180;

(iv) the quotient obtained by dividing the total number of yielding coffee plants standing on all lands held by him by 600;

(v) the quotient obtained by dividing the total number of yielding pepper vines standing on all lands held by him by 400;

(vi) the extent of lands on which tea plants are grown which have begun to yield crops;

(vii) the extent of lands on which cardamom plants are grown which have begun to yield crops:

Provided that where the total extent of land held by a person, which is cultivated with the aforesaid crops, is less than the aggregate calculated as above, the actual extent alone shall be deemed to be the extent of plantations held by him.

D. TIRUMALAI,

Secretary,

Legislative Assembly.